IN THE HIGH COURT OF JUDICATURE FOR RAJASTHAN AT JODHPUR

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:: JUDGMENT ::

Baheti Education Trust Vs. Nema Ram & Ors.

S.B.CIVIL MISC. APPEAL NO.1209/2006

Against the order dated 01.08.2006 passed by the Addl. District Judge (Fast Track) No.3 Jodhpur in Civil Misc. Case No.12/2005.

Date of Judgment : 8th December 2006

PRESENT

HON'BLE MR.JUSTICE DINESH MAHESHWARI

Mr.S.N.Bhat)
Mr.Suresh Shrimali)
Mr.Rajesh Parihar) for the appellant
Mr.Rajesh Choudhary)

Mr.J.R.Patel)
Mr.R.K.Thanvi)
Mr.S.G.Ojha) for the respondents
Mr.B.L.Bhati)

BY THE COURT:

This is plaintiff's appeal against the order dated 01.08.2006 passed by the Addl. District Judge (Fast Track) No.3, Jodhpur in Civil Misc. No.12/2005 whereby its application seeking temporary injunction under Order 39 Rule 1 & 2 CPC has been rejected.

The plaintiff stating itself to be a registered trust has filed a civil suit on 18.06.2005 for cancellation of sale deed and perpetual injunction with the submissions that the plaintiff was engaged in dissemination of education and in encouraging charitable and public utility works and has been issued certificate under Section 80-G of the Income Tax Act. The plaintiff averred that in relation to 16 bighas and 16 biswas of land comprised in khasra No.472/1 at village Dhinano Ki Dhani, Tehsil Pal District Jodhpur, its khatedar defendant No.1 Nema Ram, who had been working with the relatives of the Chief Trustee of the plaintiff for the last 20-25 years, made a request to the Chairperson of the plaintiff institution Shyam Baheti in the month of April, 2004 that he was willing to alienate the aforesaid land to the plaintiff; that thereafter in the month of June, 2004 when such request was repeated and the plaintiff was also interested in taking up its public welfare work, upon being satisfied about the land in question to be of its utility, the plaintiff agreed to accept the same; that an agreement was executed by the defendant No.1 in favour of the plaintiff to hand over the land in terms of the provisions of Section 90-B of the Rajasthan Land Revenue Act (`the Act'). The plaintiff has alleged the defendant No.1 agreed to receive Rs.11,01,000/- under the agreement and accepted an amount of Rs.1,01,000/- on

28.06.2004 and accepted cheques worth Rs.10,00,000/- of different dates from the plaintiff; the defendant No.1 executed a receipt and handed over actual physical possession of the entire land to the plaintiff; and the plaintiff put wire-fencing around the land.

It has further been averred in the plaint that in terms of Section 90-B of the Act, the plaintiff has moved application before the Urban Improvement Trust, Jodhpur ('the UIT') on 05.04.2005 with the consent and willingness of the defendant No.1 who accompanied the Chairman of the plaintiff-Trust to the UIT for the purpose of filing the application. According to the plaintiff, the defendant No.1 had also executed a surrender deed in favour of State of Rajasthan and, therefore, no right remained in him after the application was moved to the UIT; and further that upon execution of the agreement, upon acceptance of total amount under the agreement, and upon moving of application to the UIT the defendant had no right to interfere with the land or to deal with the same.

The plaintiff has alleged that defendant No.1 was thereafter overcome by greed and committed a fraud with the plaintiff-institution; and in a wholly illegal and unauthorised manner purported to sell the land in question to the defendant No.2, Smt. Shanti on 13.05.2005. According to the plaintiff

the said sale deed being wholly unauthorised remains void ab-initio; and that the plaintiff has continued in possession of the land in question and this land could never have been alienated to defendant No.2 nor possession could have been delivered. The plaintiff has also alleged that defendant No.3 was the real person behind this clandestine deal and it is doubtful if the named woman, Shanti wife of Teja Ram Bheel, at all exists? The plaintiff has alleged that all the original documents relating to the land in question have been handed over to it at the time of execution of the agreement and they are to be filed before the UIT. According to the plaintiff, in furtherance of the attempt on the part of defendants No.1 & 3 to over-reach the rights and authority of the plaintiff on the land in question, on 14.06.2005 the Chairperson of the plaintiff-institution was threatened by the defendants Nos.1 & 3 at the site to remove its stone slabs and wire-fencing; and the said defendants also threatened that they would get the entire matter rejected from the UIT or would get the file removed.

The plaintiff has asserted that the defendants No.1 to 3 have no right to interfere with its possession on the land in question or to interfere with the appropriate proceedings before the UIT under Section 90-B of the Act or to take any further proceedings under the disputed sale deed.

According to the plaintiff, in these circumstances, there was no option left with it except to file the present suit as plaintiff was a person directly affected by the sale deed dated 13.05.2005. While impleading the UIT, Jodhpur and so also the State of Rajasthan as defendants Nos.4 and 5, the plaintiff has filed the suit claiming the following reliefs:-

> "क. कि वादग्रस्त भूमि ख.नं. 472/1 (चार सौ बहत्तर बटा एक) रकबा 16(सोलह) बीघा 16(सोलह) बिस्वा ग्राम धीनाणों की ढाणी पाल तहसील व जिला जोधपुर के बाबत प्रतिवादी सं. 1 (एक) द्वारा प्रतिवादी सं. 3(तीन) से सांठ गांठ कर प्रतिवादी सं. 2(दो) के हक में दिनांक 13.05.2005 को पुस्तक सं. 1 जिल्द सं. 163 में पृष्ठ सं. 49 क्रम संख्या 2005005845 पर निष्पादित कर पंजीयन कराया गया विक्रय विलेख अवैध एवं शुन्य होने के कारण निरस्त किया जावे एवं इस विक्रय विलेख के आधार पर प्रतिवादी सं. 2(दो) के नाम से पारित नामान्तरकरण भी निरस्त फरमाया जावे।
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> ख. कि प्रतिवादीगण सं.1(एक) से 3 (तीन) को जरिये स्थाई निषेधाज्ञा से पाबंद किया जावे कि वे वादग्रस्त भूमि पर वादी संस्था के कब्जे तथा उपयोग उपभोग में किसी प्रकार का दखल ना तो स्वयं करें ना अपने किसी रिश्तेदार, एजेंट, मुखत्यार, मजदूर या अन्य किसी के द्वारा करवायें तथा ना ही वादी संस्था को इस वादग्रस्त भूमि से बेदखल करें ना ही वादग्रस्त भूमि का प्रतिवादी गण सं. 1(एक) से 3(तीन) या उनके नुमांइंदे बेचान हस्तांतरण या अन्य व्ययन अन्य किसी से करें तथा ना ही धारा 90 बी भू-राजस्व अधिनियम के तहत नगर सुधार न्यास जोधपुर के यहां प्रस्तुत कार्यवाही में प्रतिवादी सं.1 (एक) से 3 (तीन) कोई हस्तक्षेप वादी संस्था के हितों के विरूद्ध ना करें अथवा करावावें एवं उक्त पत्रावली में विधिवत आदेश पारित करने में कोई व्यवधान नहीं डालें।
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> ग. कि हर्जा खर्चा एवं दिगर दादरसी लाभप्रद वादी संस्था के हो, उसको भी प्रतिवादीगण सं. 1(एक) से 3 (तीन) से वादी संस्था को दिलवाया जावे।"

Along with the suit, the plaintiff also filed an application for temporary injunction and while reiterating the plaint averments submitted that if the defendants would be able to interfere with its possession or to interfere with the proceedings under Section 90-B of the Act before the UIT, then the plaintiff would suffer irreparable injury and claimed the following reliefs:-

> "अत:प्रार्थना पत्र प्रस्तुत कर निवेदन है कि ताफैसला मूल वाद अप्रार्थीगण सं.1(एक) से 3 (तीन) को जरिये अस्थाई निषेधाज्ञा से पाबंद किया जावे कि वे वादग्रस्त भूमि पर प्रार्थी संस्था के कब्जे तथा उपयोग उपभोग में किसी प्रकार का दखल ना तो स्वयं करें ना अपने किसी रिश्तेदार, एजेंट, मुखत्यार, मजदूर या अन्य किसी के द्वारा करवायें तथा ना ही प्रार्थी संस्था को इस वादग्रस्त भूमि से बेदखल करें ना ही वादग्रस्त भूमि का अप्रार्थीगण सं. 1(एक)से 3(तीन)या उनके नुमाइंदे बेचान हस्तांतरण या अन्य व्ययन अन्य किसी से करें तथा ना ही धारा 90 बी भू-राजस्व अधिनियम के तहत नगर सुधार न्यास जोधपुर के यहां प्रस्तुत कार्यवाही में अप्रार्थी सं. 1(एक) से 3(तीन) कोई हस्तक्षेप प्रार्थी संस्था के हितों के विरूद्ध ना करें अथवा करावावें एवं उक्त पत्रावली में विधिवत आदेश पारित करने में कोई व्यवधान नहीं डाले।"

The defendant No.1, while filing written statement has questioned the competence of the suit filed by the named plaintiff and has also alleged that suit is barred by virtue of the provisions of Section 42 of the Rajasthan Tenancy Act, 1955 ('the Act of 1955') and further because the plaintiff has not served statutory notice to the UIT and so also to the State of Rajasthan. The defendant has alleged that disputed

agreement is a forged document and has also alleged that upon his being forced to sign certain papers, he made a report to the Police on 10.06.2005 which was registered for the offences under Sections 365, 384 IPC and Section 3(i)(x) of Scheduled Castes and Scheduled Tribes (Prevention of Atrocities) Act. According to the defendant, the present suit has been filed only in order to create defence in those criminal proceedings. The defendant has also averred that the suit has been filed alleging existence of an agreement dated 28.06.2004 allegedly executed on a stamp paper issued on 28.06.2001 and there was no reason or logic for any agreement having been executed between the parties on 28.06.2004 on the stamp paper purchased three years back on 28.06.2001.

The defendant has further averred that even if for the sake of arguments existence of such agreement be accepted, yet no right accrues to the plaintiff under the said agreement because the property in question has never been transferred to the plaintiff. It has been asserted that on 19.05.2005 under his rights and authority, the answering defendant has sold the land by registered sale deed to Smt. Shanti who is in possession of the land and after purchase has put her fencing and got the land developed. It has been asserted that even if suit of the plaintiff be decreed, yet the

plaintiff would not get any right on the land in question because he has never sued for specific performance of the alleged agreement and the suit was not competent in the form it has been presented. Averments regarding possession of the plaintiff have also been denied. The defendant has asserted that he has never surrendered the land under Section 90-B of the Act to the UIT and all other documents were false and fabricated. The defendant has, therefore, prayed for dismissal of the suit.

The defendants Nos.2 and 3 Smt.Shanti and Narain Choudhary have filed a separate joint written statement and while substantially repeating the assertions made by the defendant No.1 have further asserted that the land in question was in possession of Smt.Shanti as a recorded khatedar thereof. The defendant No.4 UIT has filed a separate reply and while not joining other questions of fact related with the private parties, has of course submitted that defendant No.1 has moved an application on 21.07.2005 to the UIT stating that he has not sold the land to the plaintiff and has not executed any agreement and has not executed the surrender deed as stated before the UIT by the plaintiff and that he has sold the land to Shanti wife of Teja Ram Bheel and handed over possession of the same to the purchaser. While pointing out the objections raised by the defendant, UIT has stated that

it has stayed the proceedings for regularisation in favour of the plaintiff. It has also been stated in the written statement submitted by the UIT that the land in question being of a person of Scheduled Tribe, even if agreement be held to have been executed, the same was of no effect and further that requisite notice under Sec.98 was not served upon the UIT and that under the instructions of the government, only the agreements executed upto the year 1999 were available to be considered for regularisation under Section 90-B of the Act and on the basis of agreement dated 28.06.2004 the plaintiff has no right to seek regularisation.

Substantially the same stand have been reiterated by the defendants in respective replies to the application for temporary injunction.

It may be pointed out that the plaintiff has also submitted a replication and while denying the stand taken in the written statements has asserted that under Section 90-B of the Act, after surrender the land no longer remains available with the khatedar; that any person in whose favour agreement is executed could make application for surrender and for allotment under Section 90-B of the Act; and that as per Section 90-B, it was permissible for the UIT to allot the land to the person so surrendering. It has been asserted that the FIR was totally baseless and that agreement was entered into for

an amount of Rs.11,01,000/- and on its basis file was also submitted before the UIT that was pending. It has been maintained by the plaintiff that in compliance of the agreement, proceedings have already been submitted before the UIT and in that situation, there was no necessity for filing a suit for specific performance. It has been stated that agreement in question is not for sale of land to the plaintiff but is an agreement merely for regularisation and is not hit by Section 42 of the Act of 1955. It has also been suggested that defendant No.1 himself has surrendered the land of khasra No.446/1 for the purpose of issuance of patta in favour of non-scheduled caste and non-scheduled tribe persons and got the land regularised in their name.

It may be pointed out that an application under Order 7 Rule 11 CPC was moved before the trial court and that has been rejected on 12.07.2005 permitting the defendants to take all the objections in the written statement to be decided after framing of the issues. It appears from perusal of record that the original suit was pending for framing of issues when an application was moved by the plaintiff under Order 10 CPC and that was pending when the record was transmitted to this Court.

In the application for temporary injunction, it appears that the plaintiff moved an application under Order

19 Rule 1 & 2 CPC seeking permission to cross-examine the deponent Smt.Shanti and the said application was dismissed by the learned trial court on 20.07.2006 on the consideration that the matter was required to be decided on affidavits and the deponent could be called for cross-examination only in the main suit.

Thereafter, the learned trial court by its order dated 01.08.2006 has proceeded to reject the application for temporary injunction with the observations that no prima facie case was made out in favour of the plaintiff. The learned trial court was of the view that the plaintiff has failed to show payment of consideration stated in the agreement and that chque numbers stated in the agreement were denied by the bank to have been issued. The learned trial court also observed that the sale deed was executed and registered in favour of Shanti Devi for consideration and her possession was also shown at the site and a report was also lodged by Nema Ram against the plaintiff. Therefore, prima facie case and balance of convenience were in favour of the owner Shanti Devi and other persons. The learned trial court observed that the plaintiff would not suffer any irreparable injury because cheques in question were not paid and if there was any pecuniary loss to the plaintiff, the same could be recovered.

Assailing the order passed by the learned trial court, learned counsel for the plaintiff have strenuously urged that payment having been made by the plaintiff, the original documents having been delivered to the plaintiff and possession of the land in question having also been delivered, the learned trial court was in error in not considering existence of prima facie case in favour of the plaintiff. It has been contended that the surrender deed was executed by Nema Ram in favour of the UIT and that the sale deed in favour of Smt.Shanti Devi was an entirely cooked up story and even existence of the named lady is in doubt. It has further been strenuously urged that the registered sale deed said to have been executed in this case gives rise to serious questions because all the proceedings including filling up of deficiency of stamp duty and visits to the site are alleged to have been carried out the same day and the document was registered and delivered. It has been contended that the plaintiff has a right under Section 90-B of the Act to get the patta of the land in question issued in its favour under the proceedings that are pending before the UIT. Assailing the approach of learned trial court, it has been contended by learned counsel for the appellant that the learned trial court had been seriously in error in relying upon only a part of material available on record in the form of information supplied to the

police by the bank authorities in relation to the cheque numbers but in not considering the certification issued by the very same bank pointing out about cheque book containing cheques of serial numbers as stated in the receipt of the defendant having been issued to the plaintiff. Rejection of application under Order 19 Rule 1 & 2 CPC for the purpose of cross-examination of Smt.Shanti Devi has also been assailed being contrary to the settled law that provisions of Order 19 CPC do apply to the application under Order 39 Rule 1 & 2 CPC.

Per contra, on behalf of the respondents it has been contended that the learned trial court has rightly rejected the application for temporary injunction and the scope of interference in appeal in the discretion exercised by the trial court remains limited; and no case is made out for interference in such limited scope. Learned counsel for the respondents has submitted that no right exists in the plaintiff, possession was never delivered to the plaintiff, and the plaintiff is not entitled for any injunction. It has been contended that the contract as professed by the plaintiff is hit by the provisions of Section 42 of the Act of 1955; that no such agreement could at all have been entered into; that no amount has been paid to the defendant as is apparent from the balance-sheet of the plaintiff-institution which shows that no such amount was

available as on 31.03.2005 so as to make payment to the defendant under the cheques in question. The disputed agreement has further been assailed having not been executed on proper stamp paper and carrying only attestation by the notary. The right and authority of the named trust to hold and acquire any property has also been questioned.

It has been maintained on behalf of the UIT, respondent No.4 that application moved under Section 90-B of the Act before it in this matter seems to be unauthorised as no such authority of moving the application has been shown existing in favour of the Chairperson of the plaintiff, Shyam Baheti. However, learned counsel for the UIT specifically submitted that because of pending litigation, the UIT has stalled the proceedings and has not proceeded further.

It has been contended in rejoinder on behalf of the plaintiff-appellant that the agreement in question is an irrevocable agreement and the defendant is not entitled to resile out of the same; that Section 42 of the Act of 1955 does not apply; that Section 90-B of the Act being special law definitely prevails over general law contained in Section 42 of the Act of 1955; that the matter was essentially of fraud committed by defendant No.1 Nema Ram; that plaintiff was not required to sue for specific performance; that story of wire fencing having been put by Smt.Shanti Devi at the site does

not inspire confidence and on the contrary, such wire fencing has been put by the plaintiff who is in possession of the land in question. Learned counsel for the parties have relied upon several decisions in support of their respective contentions.

Submissions of learned counsel for the parties have been given thoughtful consideration and entire record has been scanned through.

It has been contended on behalf of the respondents in the first place that the powers of the Appellate Court while dealing with an appeal against the order passed under Order 39 Rule 1 & 2 PC are limited and the Appellate Court would not interfere with the discretion exercised by the trial court unless it suffers from any illegality, perversity or has been in disregard of sound judicial principles. Having examined the entire record, this Court is clearly of opinion that the observations as made in the impugned order remain laconic and are not indicative of the learned trial Judge having scanned through entire record and having grasped the substance of the matter. The entire burden of impugned order has been the disputed cheques allegedly issued by the plaintiff and denied by the defendant and for which the bank stated earlier to the investigating agency that the questioned cheques were not issued by it. It appears that before conclusion of submissions on temporary injunction application,

the plaintiff produced on record on 23.07.2006 a specific certification from the same bank that such cheque book inclusive of questioned cheques was issued to the plaintiff. In fact, nothing much turns upon the fact if such cheques were issued or were got encashed by Nema Ram or not. For the purpose of prima facie consideration, suffice is to notice that according to the material produced on record, such cheques were of course available with the plaintiff to be issued. Whether they were not so issued and no such agreement was at all entered into are the matters to be considered at the time of final decision of the suit.

However, the question is whether for such laconic observations, the order impugned deserves to be set aside so as to require the learned trial court to reconsider the matter over again? Ordinarily, having found the order impugned being laconic and not dealing with all the material on record, this Court would have considered remitting the matter to the trial court for consideration afresh, however, having examined the facts of the case and the law applicable coupled with the frame of the suit and the reliefs claimed, this Court is of opinion that the plaintiff is not entitled for temporary injunction in terms prayed for and, therefore, no purpose would be served by sending the matter back.

Relevant clauses in the alleged agreement dated 28.06.2004 show that the agreement has been entered into for the purpose of proceedings under Section 90-B of the Act but then it has been given a shape of sale transaction as could be noticed from the following clauses in the agreement,-

"02. यह है कि उपरोक्त खसरा नम्बर 472/1 की कृषि भूमि जिसका रकबा 16 बीघा 16 बिस्वा जो राजस्व अभिलेखों में प्रथम पक्षकार के नाम से खातेदारी अंकित हैं अर्थात उपरोक्त भूमि का प्रथम पक्षकार खातेदार हैं जिसका इन्द्राज राजस्व अभिलेख में बतौर खातेदार की हैसियत से अंकित हैं वर्तमान में मौके पर भूमि का कब्जा कास्त भी प्रथम पक्षकार का ही है जिसमें किसी दीगर शख्स, संस्था का दखल, हिस्सा अथवा बंट नहीं है । जिसको आज दिन आप शैक्षणिक संस्था बाहेती एजूकेशनल ट्रस्ट जरिये अध्यक्ष श्याम बाहेती को रूपये 11,01,000/- अखरे रूपये ग्याराह लाख एक हजार मात्र के बदल शैक्षणिक उद्देश्यों की पूर्ति के लिये <u>विक्रय करना निश्चय किया है</u> और इसी रकम के बदल द्वितीय पक्षकार <u>ने खरीद करना स्वीकार किया हैं</u> जिसकी कीमत के चुकते रूपये 11,01,000/- अखरे रूपये ग्याराह लाख एक हजार मात्र में से रूपये 1,01,000/- अखरे रूपये एक लाख एक हजार मात्र आज दिन नकद प्राप्त कर लिये हैं तथा रूपये 10,00,000/- अखरे रूपये दस लाख मात्र के चैक विभिन्न तारीखों के प्राप्त कर लिये हैं ।

03. यह हैं कि राज्य सरकार के द्वारा भू-राजस्व अधिनियम की धारा 90 (B) में किये गए संशोधन एवं समय-समय पर जारी किये गए परिपत्रों व सरकुलर तथा अध्यादेंशों की रूह में द्वितीय पक्षकार ने यह निर्णय लेकर तय किया कि उपरोक्त कृषि भूमि को एक अच्छी व सुन्दर शैक्षणिक संस्था में विकसित किया जाये जिसके लिये प्रथम पक्षकार, द्वितीय पक्षकार ट्रस्ट से निम्न शरायतों पर उपरोक्त भूमि को शैक्षणिक प्रयोजनार्थ रूपान्तरित करवाया जाकर विकसित किये जाने के लिये यह इकरारनामा लिखकर तहरीर व तकमील करता हैं ।

1. यह है कि आप द्वितीय पक्षकार उपरोक्त खसरा नम्बर 472/1 कुल रकबा 16 बीघा 16 बिस्वा की भूमि का सम्पूर्ण रूप से योजनाबद्ध तरीके से तथा नगर सुधार न्यास जोधपुर व वरिष्ठ नगर नियोजक तथा वर्तमान में प्रचलित मास्टर प्लान के नियमों तथा उपनियमों के अनुरूप नक्शा बनाकर उसको कार्य रूप में परिवर्तित करने हेतु जो भी कार्यवाही करनी होगी द्वितीय पक्षकार आज से कर सकेंगे उपरोक्त भूमि का इस प्रकार की कार्यवाही किये जाने हेतु <u>वास्तविक तथा भौतिक रूप से कब्जा आप द्वितीय पक्षकार</u> को सुपुर्द कर दिया हैं आज से द्वितीय पक्षकार उपरोक्त भूमि को शैक्षणिक संस्था प्रयोजनार्थ विकसित किये जाने हेतु कार्यवाही कर सकेंगे ।"

(underlining supplied)

It has been specifically maintained on behalf of the plaintiff that this is not an agreement for sale of land but is an agreement only for the purpose of proceedings under Section 90-B of the Act. Section 90-B as inserted by the Rajasthan Laws (Amendment) Act, 1999 and as amended by the Rajasthan Land Revenue (Amendment) Bill, 2002 provides for complete code for termination of rights and resumption of land in certain cases. Omitting irrelevant for the sake of brevity, relevant provisions of Section 90-B are reproduced hereunder:

> **"90-B. Termination of rights and resumption of land in certain cases:-** (1) Notwithstanding anything to the contrary contained in this Act and the Rajasthan Tenancy Act, 1955 (Act No.3 of 1955) where before the commencement of the Rajasthan Laws (Amendment) Act, 1999 (Rajasthan Act No.21 of

1999) any person, holding any land for agricultural purposes in urbanisable limits or peripheral belt, of an urban area, as may be notified from time to time by the State Government by notification in the Official Gazette, has used or has allowed to be used such land or part thereof, as the case may be, for non-agricultural purposes or, has parted with possession of such land or part thereof, as the case may be, for consideration by way of sale or agreement to sell and/or by executing power of attorney and/or Will or in any other manner, for purported non-agricultural use, the rights and interest of such a person in the said land or holding or part thereof, as the case may be, shall be liable to be terminated and such land shall be liable to be resumed.

(2). Where any land has become liable to be resumed under the provisions of sub-section (1), the Collector or the officer authorised by the State Government in this behalf, shall serve a notice, calling upon such person to show cause why the said land may not be resumed summarily, and among other things, such notice may contain the particulars of the land, cause of proposed action, the place, time and date, where and when the matter shall be heard.

(3) When the tenant or the holder of such land or any person duly authorised by him, as the case may be, makes an application to the Collector or the officer authorised by the State Government in his behalf, expressing his willingness to surrender his rights in such land, with the intention of developing such land for housing, commercial, institutional, semi-commercial, industrial, cinema or petrol pump purpose or, for the purpose of multiplex units, infrastructure projects or tourism projects or, for such other community facilities or public utility purposes, as may be notified by the State Government the Collector or officer authorised by the State Government in this behalf, shall upon being satisfied about the willingness of such person, order for termination of rights and

interest of such person in the said land and order for resumption of such land.

(4) The proceeding in the matter shall be conducted summarily and shall ordinarily be concluded within a period of sixty days from the first date of hearing specified in the notice served under sub-section (2).

(5) Where, after hearing the parties, the Collector or the officer authorised by the State Government in this behalf, is of the opinion that the land is liable to be resumed under sub-section (1), he shall after recording reasons in writing, order for termination of rights and interest of such person in the said land and order for resumption of the said land.

(6) The land so resumed under sub-sections (3) and (5) shall vest in the State free from all encumbrances and shall be deemed to have been placed at the disposal of the concerned local authority under section 102-A of this Act with effect from the date of passing such order:

Provided that the land surrendered under sub-section (3) above, shall be made available to the person, who surrenders the land, for its planned development in accordance with the rules, regulation and bye-laws applicable to the local body concerned, for housing, commercial, institutional, semi-commercial, industrial, cinema or petrol pump purposes or, for the purpose of multiplex units, infrastructure projects or tourism projects or, for other community facilities or public utility purposes.

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Without going into the question as to whether the agreement was entered into or not and taking the submissions of plaintiff on their face value, this Court is of

opinion that for the purpose of Section 90-B of the Act the submission that by virtue of the disputed agreement, the plaintiff has acquired indefeasible right to get the land regularised in its favour seems extremely doubtful. Sub-Section (3) of Section 90-B provides that Collector or authorised officer of the State is required to be satisfied about willingness of such person for surrender of his rights to the government; and such surrender of rights could naturally be made by a person who has existing rights in him. Then, under proviso to sub-section (6) of Section 90-B it is the person surrendering the land who is to be made available the land for planned development for the purposes stated therein in accordance with the rules and regulations applicable to the local body concerned. It is difficult to countenance the submissions of the plaintiff that though no title in the land has been transferred to it, and yet merely for the agreement and for its moving an application for surrender, it gets the right to be made available the land by the local body.

Under the said agreement, if the plaintiff alleges transfer of all the property rights to it, then the same clearly answers to the description of a conveyance and then neither it could have been executed on a Rs.100/- stamp paper nor it could be taken into consideration for being an unregistered document. Other way round, if it is suggested to be merely an

agreement, by its very nature, the agreement is determinable and depends on volition of the khatedar inasmuch as for the purpose of valid proceedings under Section 90-B of the Act surrender ought to come from a khatedar and the Collector is required to be satisfied about his willingness of such surrender. Having examined the contents of the agreement and the operation of provisions of Section 90-B of the Act, this Court is of opinion that if at all the plaintiff alleges existence of some right in it on the basis of such agreement, the suit in the present form merely for cancellation of sale deed and for injunction so as to proceed with 90-B proceedings cannot be said to be based on existing right in the plaintiff. Whatever plaintiff has shown in the suit are potential rights and not beyond.

The decisions relied upon by the learned counsel for the plaintiff dealing with general fundamental principles of Order 39 Rule 1 & 2 CPC need no dilatation for a prima facie case obviously means a case that requires on the face of it investigation further. It also remains settled that if there is no prima facie case, granting of temporary injunction is not envisaged by law. The plaintiff has relied upon the decision in Bhauroo Singh Vs. Mst.Dulari: 1992 (1) WLC 634 wherein grant of temporary injunction was considered in the light of the fact that suit was filed for the relief of specific performance.

In the present case, the plaintiff has consciously chosen not to file the suit for specific performance and even to an objection in the written statement about the plaintiff having not sued for specific performance, it has been maintained that the plaintiff is not required to sue for specific performance and according the plaintiff, agreement is a fait accompli once application has been moved to the UIT.

The original record of UIT has been placed for perusal by learned counsel for UIT and it appears that specific objection was made before the UIT by the defendant No.1 Nema Ram on 20.07.2005 questioning the proceedings and this Court is prima facie of opinion that such proceedings under Section 90-B of the Act for the purpose of surrender of land to the UIT and then receiving regularisation from the UIT cannot be brought about particularly when put to direct objection by the khatedar. It goes without saying that till the land was specifically converted and regularisation grant was issued, Nema Ram defendant No.1 continued to be a khatedar and mere moving of the application under Section 90-B of the Act cannot be said to have invested the plaintiff with an indefeasible right in the land in question. Even if the plaintiff considered existence of a right in it on the basis of disputed agreement and the defendant attempted to deny such rights, the plaintiff has chosen not to sue for specific performance

but directly for the cancellation of sale deed and in the frame of the suit before the court, the plaintiff does not appear having a prima facie case in its favour.

This is apart from the fact that various loopholes have been stated by the defendants impinging upon the very existence of the agreement including the fact that payment of a substantial amount to the tune of Rs.1,01,000/- by way of cash by a Trust having certification under Section 80-G of the Income Tax Act does not appear probable in the ordinary circumstances. Then the balance-sheet of the Trust as on 31.03.2005 does not carry any such balance for which alleged cheques issued to Nema Ram could have been encashed, if presented.

So far Shanti Devi, defendant No.2 is concerned, there is a specific sale deed executed in her favour and it remains trite in law that registration carries with it presumption in favour of transaction and about identity of the parties thereto. On the basis of such registration, mutation has also been sanctioned in favour of Shanti Devi. Standing the presumption in favour of the transaction evidenced by registered document, this Court is of opinion that unless such presumption is rebutted by cogent evidence during trial of the suit, the said defendant cannot be denied the rights available under such registered document.

Even regarding possession on the land in question, it is difficult to countenance the submissions of the plaintiff at this stage that plaintiff was put in possession on the land in dispute under the agreement in question. Again, if the agreement was such whereunder possession was transferred to the plaintiff, this Court is of opinion that such transaction could not have been brought about except by way of registered document. Then, with the prima facie presumption about the validity of the transaction under the registered sale deed, it does not appear appropriate to doubt the possession of Shanti Devi on the land in question. In the overall circumstances of the case, this Court is clearly of opinion that there is no such prima facie case existing in favour of the plaintiff for which it could be held entitled for issuance of a temporary injunction in the form prayed for. Moreover, the UIT having already stated of not proceeding with the matter further, this Court is of opinion that the plaintiff is not entitled to seek a mandatory injunction at this stage for the purpose of directions to the UIT so as to consider and grant the application under Section 90-B of the Act moved by the plaintiff.

It is true that the learned trial court has not been correct in denying the application under Order 19 Rule 1 & 2 CPC for cross-examination of Shanti Devi on the

consideration as adopted; however, for the reasons stated above, this Court finds that there appears no reason or justification to subject the defendant No.2 to cross-examination for the purpose of consideration of the application under Order 39 Rule 1 & 2 CPC.

In the aforesaid view of the matter, though the order passed by the learned trial court does not carry requisite expression on the material on record and law applicable to the case, however, this Court is of opinion in the ultimate analysis, the plaintiff does not appear entitled for temporary injunction in the manner and form prayed for.

However, the suit filed by the plaintiff is pending before the trial court and the matter relates to immoveable property and, therefore, it appears in the fitness of things, in the balance of equities and for avoiding multiplicity of proceedings that though the plaintiff is not entitled for temporary injunction in the manner and form prayed for, it be made clear that all the proceedings that are taken by the defendants in relation to the suit land remain subject to final decision of the suit. Therefore, it appears appropriate to direct the defendants No.1 and 2 that in case of their dealing with the land in question in any manner during the pendency of suit, they shall be required to state on every such transaction about the fact of pendency of the suit. Similarly, upon taking

up of any proceeding relating to the suit land by the defendants No.4 and 5, it shall be required to declare that such proceedings shall remain subject to final decision of the suit.

Subject to the observations and requirements aforesaid, this appeal fails and is dismissed. Record of the trial court be sent back immediately. It shall be permissible for the parties to request the trial court to proceed expeditiously with the trial of the suit. There shall be no order as to costs of this appeal.

(DINESH MAHESHWARI),J.

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